To:

The Chair and Committee
for LCO (Mental Health)
The National Assembly for Wales

8th May, 2008

Evidence: Proposed Provision of Mental Health Services LCO Committee – The National Assembly for Wales (Legislative Competence) (No 6) Order 2008 (Relating to Provision of Mental Health Services)

Introduction

The Police Federation of England & Wales (*The Federation*) welcomes the opportunity to provide additional evidence to the Committee considering the Mental Health LCO.

The Federation is grateful for the invitation to give oral evidence to the Committee on 20th May, 2008. Unfortunately, the proposed date falls midway through The Federation's main annual UK conference. Indeed, the issue of mental health and its relationship with the criminal justice system is being discussed with officers at the conference as, without doubt, this is a matter of grave concern to those charged with the responsibility of providing an effective service delivery to the public and/or those who may suffer from a psychiatric disorder or illness.

It has been the policy of The Federation since 1996 to have 'police stations' removed from the definition of a place of safety as defined within the Mental Health Act and ultimately that would be our preferred option. That said, within the scope of the proposed LCO, we believe that substantial progress can be made to benefit the rights and the care of mentally disordered persons who come into contact with the police.

The Federation welcome the bold move by the 'Assembly' towards creating this much needy legislation and this is illustrative also that it remains fully committed to the dynamic process of this LCO and if necessary, it can be called forward to give additional evidence to the Assembly's or indeed any other associated Committees.

Background

The Police Federation was formed by an Act of Parliament and, in Wales, it represents over 7,600 police officers, or 98% of all uniformed and CID ranks from Constable to Chief Inspector. The Superintendents Association and Association of Chief Police Officers form the remaining 2%.

The Federation's membership comes from each of Wales' four police forces.

The Federation was established to protect and promote the 'welfare & efficiency' of police officers and in its discharge of functions as laid down by statute.

The Police have a duty of care to the public. They are essentially discharging their duty 'to protect life'. That is a principle which is, of course, also underwritten by other emergency services and, indeed, by the NHS itself.

Mental health prisoners & patients

Nye Bevan 1952: *"The collective principle asserts that no society can legitimately call itself civilized, if a sick person is denied medical aid because of the lack of means"*

Essentially, for the purposes of this LCO and the written evidence that The Federation wish to give, we are not concerned with patients who have been sectioned under the Mental Health Act and are thereby confined to a place of safety with full medical support in either a specialist medical unit or hospital.

The Federation is primarily concerned with the use of officers when, as part of their core role, they are used as a first-line-response to a member of the public who comes to their notice and who may, or may not, be mentally disordered and, thereafter, how they are dealt with and cared for by the NHS and the police.

The Federation believe that it cannot be right, that a person who is 'mentally disordered' (howsoever defined) should be detained in a police cell. Custody suites in Wales are neither equipped nor staffed to deal with the specific needs of a mentally disordered person.

Police custody suites are designed as areas to hold prisoners who have allegedly committed criminal acts with a view to ensuring their security, to assist in gathering evidence and to facilitate the administration of justice at that early stage, whether through interviewing, charging or releasing.

It is an unfortunate fact that, all too often, those who die in police custody emanate from vulnerable groups, including, it must be said, the mentally disordered. Coroners and human rights groups are then forced to express their concerns retrospectively, with all agreeing that these vulnerable persons should never have been placed into a police cell.

This stance is fully supported by The Police Federation, mental health charities, The Association of Chief Police Officers, The Superintendents Association and importantly also, The Independent Police Complaints Commission.

Despite this consensus of agreement, mentally disordered 'patients' are brought into police custody/safety and custody sergeants are then required to provide what care they can for these people with little training and few resources whilst they await an assessment by an appropriately qualified person. If the detained person is thought to be suffering from the influences of alcohol or drugs, he/she will be detained in a police cell until sober as these substances will affect the assessment process. That, of course, may take many hours, stretches police resources, places the staff within the custody suite under increased risk of legal jeopardy and, most importantly, places the detained person at a continued risk.

The proposed LCO, has the scope and potential to alleviate this problem.

LCO Objectives

In context:-

- The objectives of the proposed LCO are to provide mentally disordered persons with a right to assessment by the health service in Wales, with duties on the health service to provide treatment, and a right to independent mental health advocacy.

It should be noted that for those detained for 'their own safety' in police custody there are no timescales for any assessments to be made.

- The proposed LCO is to enable earlier assessments and treatment for mentally disordered persons.

The Federation submit that this requires statutory guidelines for those brought into a police station for their own safety.

- The proposed LCO is to give mentally disordered persons a right to independent mental health advocacy services in circumstances that will not be provided for under current legislation.

The current legislation does not refer to those brought to the notice of the police, and, therefore, they are not assessed within the same guidelines.

It is the Federation's contention that the grey area of 'mental health patients' being brought initially into police custody/safety should not be considered in line with those being assessed for detention, or liable to be detained or liable to recall under the Mental Health Act 1983 (or any statutory modification or re-enactment thereof).

The interpretation of such 'mentally disordered persons' clearly includes persons who are suffering *any disorder* or *disability* of the mind. It is the Federation's view, therefore, that this is a human right and, as such, any person brought to the attention of the police who may/or may not be 'mentally disordered' should be given the same rights.

The custody-safety route

Any person brought into a custody suite by a police officer, for either a crime or their own safety, has to satisfy basic criteria of law. This is to establish why they are to be held. Such criteria may include:

- Available evidence of wrong-doing
- The legal necessity for their detention
- The ultimate purpose of their detention (gathering further evidence, questioning/assessment etc)

Essentially the circumstances are considered by the Custody Sergeant as required by the Police and Criminal Evidence Act, 1984 (PACE) which was initiated to strengthen and formalise the rights of those detained in police custody and to provide suitable safeguards for their well-being. That Sergeant will also consider the further needs of the investigation as well as those of the prisoner.

PACE states that a person detained under sect 136 must be assessed 'as soon as possible' by approved social worker and registered practitioner.

In reality they are normally seen by a police surgeon who carries out an assessment and then calls on the mental health services if they think there is an issue. To what extent police surgeons doctors are trained to assess mental health is unknown.

If the prisoner is the subject of a criminal enquiry then, clearly, that 'crime' needs to be investigated. However, for those deemed (in lay terms) to be mentally ill, a doctor is called to asses that person.

There are no advisory guidelines or statutory 'timescales' for how long a 'prisoner' can be detained without them seeing - on first referral by the police - a doctor or any other qualified medical staff, such as a nurse. It is at this stage that those detained are at their most vulnerable.

The holding of a person in such a condition may last for many hours awaiting either the attendance of a doctor to carry out a basic assessment or for the 'prisoner' to be suitably free of any intoxicant to enable the assessment to take place. The timeliness of such an assessment may, of course, be further hampered by the need to obtain the services of a language translator.

- Mental Health Act, Section 3.16 states that *"It is imperative that a mentally disordered or otherwise mentally vulnerable person, detained under the Mental Health Act 1983, section 136, be assessed as soon as possible. If that assessment is to take place at the police station, an approved social worker and a registered medical practitioner shall be called to the station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed, examined and suitable arrangements made for their treatment or care, they can no longer be detained under section 136. A detainee must be immediately discharged from detention under section 136 if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act"*

It is a fact, that police resources are not suitably equipped to deal with mentally disordered prisoners who may need care as opposed to simple restraint. We have 'police cells' as opposed to 'secure units' and police officers or contracted civilian detention officers, as opposed to 'medically trained personnel'. Access to medically trained personnel is, of course, available but such prisoners could, currently, be taken to any custody suite in Wales with no guarantee of permanent or ad hoc, medical staff being in attendance.

Similarly, in order to transport such persons – who are in legal terms now classified as 'prisoners' - for assessment to, say, a hospital, may require the use of police vehicles which have never been designed or adapted for such use and the journey distances may well cover many miles, particularly in the rural areas of Wales.

Inevitably, the use of such transportation requires that at least two police officers will be taken from their normal core duties, to escort the person 'in safety' (a lay term). This could and, indeed, has been, entirely in vain where the staff at the hospital or psychiatric unit then refuse to assess the individual on the grounds of intoxication. In such cases, the prisoner is returned to the custody suite and kept in detention until an assessment can be completed.

A large number of those subsequently assessed are then released with no further formal action being taken. This is often due to the fact that they <u>may</u> previously have used alcohol to excess, illicit or prescribed drugs or a combination of each or that they no longer appear to form a threat to either themselves or a member of the public.

In such cases, that person may be advised by the doctor to attend at a psychiatric clinic as a voluntary patient. The police will have no legal reason to detain this person further and they will then be released back into the public domain with at that stage no further police contact (this figure stands at about 83%) or importantly the person will have no support from the authorities, unless it is voluntarily sought. All too often, that person will, at some stage - and often very soon thereafter - come back to the attention of the police and, once again, be taken back into police custody.

It must also be advised that where some 'voluntary agreements' exist, between Health Authorities and the Police, these have in the past assisted in dealing with some humanity with the mentally ill/disordered. However, The Federation firmly believe that *statutory protection* for the mentally ill is now more appropriate, not only in terms off clarity in public service delivery terms, but to ensure clarity also in legal terms. The financial constraints both within the Health service and the police service has made the up keep of such 'voluntary arrangements' almost impossible with no control, measures or configured management possible.

As an illustrative point, and taking just one police force as an example, the smallest geographically of the Welsh forces, Gwent, in 2007, made 407 arrests under S136 of the Mental Health Act with the average time 'in custody/police care' as being 8 hours 50 minutes.

Death in custody/police contact

Whenever a person dies in either police custody, or following any police contact, the Independent Police Complaints Commission (IPCC) have a statutory duty to investigate the circumstances. This could result in the officers engaged within the custody suite, as well as those responsible for conveying the person there, or who have or may have had contact, being placed under formal investigation where their every action, whether routine or otherwise, will be scrutinised with finite detail. This process creates excessive stress and deep anxiety in officers, who are simply attempting to do a professional job in difficult circumstances and with very limited, or no other professional resources.

- Nick Hardwick, Chair Independent Police Complaints Commission (IPCC) – Address to Police Federation Conference 2005*: "….50% of the deaths in police custody that occurred in our first operational year* [2002] *were people with a mental health problem. Frankly I am much more interested in preventing these tragedies occurring than I am in investigating them afterwards. We are working with the health service, voluntary agencies, the Home Office and all parts of the police services to address this".*

- IPCC figures (2007): 38 people died in police custody in 2007.

- Report by Ministry of Justice: 8th May 2008, do not show how many people died in police custody who had, or who could have had mental instability.

Transportation

The transportation of mentally disordered persons creates its own problems. It may well be inappropriate to allow such a prisoner to be unaccompanied in the 'rear cage' of a police van, as may be the case for criminal prisoners, but, due to the uncertainty of the person's psychiatric condition, transporting the person even in the rear of a police car has inherent dangers.

It is by no means unusual for 'prisoners/patients' to attempt to escape, to attack the escorting officers or to interfere with the driver in a bid to force the vehicle to crash. In such circumstances, police restraint techniques will have to be used which may well differ from those used by psychiatric professionals and which may not be in the best interests of a person who requires medical care, as opposed to simple restraint.

Undoubtedly, cases exist where those suffering from a mental disorder have been released from police custody only to then harm themselves, or others within their own family, or wider public community. The Police have a duty of care to not only those they detain, but also to those that they interact with. It is therefore vital, that appropriate safeguards are put in place to allow them to do just that.

The recommendations of the Police Federation

That within the scope of the LCO :

- That *designated* custody suites have the permanent attendance of a fully trained NHS nurse where officers in each police force can, if absolutely necessary, take a person for their own safety.

- It is accepted that if a person is *arrested for a criminal offence* and there are concerns that there may be mental health issues and that a police surgeon attends to examine. However if a person is *arrested under section 136,* the assessment should be carried out by the appropriate people in the appropriate place, being a hospital or secure unit and not a police cell.

- That statutory limits are set which require a doctor, trained in assessments of mental health and a social worker to attend a designated custody suite within 1 hour of arrival.

- That transportation of any person brought to the attention of the police and who is to be taken from a designated custody suite to a hospital or specialist unit, is to be transported by ambulance only and for statutory time limits to be set.

Wayne Baker
Joint Branch Board Secretary
The Police Federation of England & Wales
Police Station
155 Neath Rd, Neath SA11 2BX